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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 324**

**Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010**

**Amendments in consequence of the Home Owner and Debtor Protection (Scotland) Act 2010**

2.—(1) The Summary Application Rules are amended in accordance with the subparagraphs (2) to (5).

(2) In rule 2.7 (warrants, forms and certificate of citation), omit paragraph (7A)(1).

(3) Rule 22.2A (applications under the Mortgage Rights (Scotland) Act 2001)(2) is omitted.

(4) For Part IV (Conveyancing and Feudal Reform (Scotland) Act 1970) of Chapter 3 substitute—

**“PART IV**

**ENFORCEMENT OF SECURITIES OVER HERITABLE PROPERTY**

*SECTION 1 Interpretation*

**3.4.1.** In this Part—

“the 1894 Act” means the Heritable Securities (Scotland) Act 1894(3);

“the 1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970(4);

“application for enforcement of security over residential property” means any of the following—

- (a) an application under section 24(1B) of the 1970 Act alone (“a 1970 Act only application”);
- (b) an application under section 5(1) of the 1894 Act, in a case falling within section 5(2) of that Act, alone (“an 1894 Act only application”);
- (c) an application under paragraphs (a) and (b) together (“a combined 1970 Act and 1894 Act application”);

“entitled resident” means—

- (a) in a 1970 Act only application, a person falling within the definition of that expression provided by section 24C of the 1970 Act;
- (b) in an 1894 Act only application, a person falling within the definition of that expression provided by section 5D of the 1894 Act;
- (c) in a combined 1970 Act and 1894 Act application, a person falling within either of those definitions;

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(1) Rule 2.7(7A) was inserted by [S.S.I. 2002/7](#).

(2) Rule 2.22A was inserted by [S.S.I. 2002/7](#).

(3) [1894 c.44](#).

(4) [1970 c.35](#).

“entitled resident application” means any of the following—

- (a) an application under section 24B of the 1970 Act alone;
- (b) an application under section 5C of the 1894 Act alone;
- (c) an application under paragraphs (a) and (b) together.

“pre-action requirements” means—

- (a) in a 1970 Act only application, the requirements specified in sections 24A(2) to (6) of the 1970 Act, together with any provision made under section 24A(8) of that Act;
- (b) in an 1894 Act only application, the requirements specified in sections 5B(2) to (6) of the 1894 Act, together with any provision made under section 5B(8) of that Act;
- (c) in a combined 1970 Act and 1894 Act application, both of those sets of requirements;

“a recall of decree application” means any of the following—

- (a) an application under section 24D of the 1970 Act alone;
- (b) an application under section 5E of the 1894 Act alone;
- (c) an application under paragraphs (a) and (b) together.

#### *SECTION 2 Disposal of applications under Part II of the 1970 Act for non-residential purposes*

**3.4.2.—**(1) This rule applies to an application or counter-application made by virtue of paragraph (3)(2)(b) of the Act of Sederunt (Sheriff Court Rules) (Enforcement of Securities over Heritable Property) 2010(5).

(2) An interlocutor of the sheriff disposing of an application or counter-application is final and not subject to appeal except as to a question of title or as to any other remedy granted.

#### *SECTION 3 Initial writ*

**3.4.3.—**(1) An application for enforcement of security over residential property must include averments that the pre-action requirements have been complied with.

(2) The pursuer must lodge Form 11C with the initial writ.

(3) The initial writ must specify the name and particulars of all persons known by the pursuer to be entitled residents; and crave warrant for intimation to such persons.

#### *SECTION 4 Appointment of Hearing*

**3.4.4.** On an application being submitted under rule 3.4.3, the sheriff must—

- (a) fix a hearing;
- (b) appoint service and intimation of the initial writ and Form 11C.

#### *SECTION 5 Answers*

**3.4.5.—**(1) Where a defender opposes an application, the sheriff may order answers to be lodged within such period that the sheriff specifies.

(2) The answers must—

- (a) specify the name and particulars of all persons known by the defender to be entitled residents who have not already been named in the initial writ; and crave warrant for intimation to such persons; or
- (b) state that to the best of the defender's knowledge there are no other entitled residents.

*SECTION 6 Intimation to known entitled residents*

**3.4.6.** The sheriff must order that a copy of the initial writ together with a notice in Form 11D and Form 11E be intimated to all entitled residents referred to in rules 3.4.3(3) and 3.4.5(2) (a).

*SECTION 7 Application to court by entitled residents*

**3.4.7.—**(1) This rule applies to an entitled resident application.

(2) Such application is to be made by lodging a minute in Form 11E in the principal application to which the application relates.

(3) On a Form 11E being lodged, the sheriff must—

- (a) fix a hearing of the entitled resident application;
- (b) order parties to lodge answers (where the sheriff considers it appropriate to do so) within such period that the sheriff specifies;
- (c) order the applicant to serve upon every party and intimate to every entitled resident—
  - (i) a copy of the entitled resident application;
  - (ii) a note of the date, time and place of the hearing.

*SECTION 8 Recall of decree*

**3.4.8.—**(1) This rule applies to a recall of decree application.

(2) Such application is to be made by lodging a minute in Form 11F.

(3) On a Form 11F being lodged, the sheriff clerk must fix a hearing of the recall of decree application.

(4) Where a hearing has been fixed under paragraph (3) the person seeking recall must, not less than seven days before the date fixed for the hearing, serve upon every party and intimate to every entitled resident—

- (a) a copy of the recall of decree application;
- (b) a note of the date, time and place of the hearing.

(5) At a hearing fixed under paragraph (3), the sheriff must recall the decree so far as not implemented and the hearing will then proceed as a hearing held under rule 3.4.4(a).

(6) A minute for recall of a decree, when lodged and served or intimated in terms of this rule, will have the effect of preventing any further action being taken to enforce the decree.

(7) If it appears to the sheriff that there has been any failure or irregularity in service or intimation of the minute for recall of a decree, the sheriff may order re-service or re-intimation of the minute (as the case may be) on such conditions as he or she thinks fit.

(8) Where the person seeking recall does not appear or is not represented at the hearing for recall, the sheriff will pronounce an interlocutor ordaining that person to appear or be represented at a peremptory diet fixed by the sheriff to state whether or not that person intends

to proceed with the person's defence or application, under certification that if that person fails to do so the sheriff may grant decree or make such other order or finding as the sheriff thinks fit.

(9) The diet fixed in the interlocutor under paragraph (8) must not be less than 14 days after the date of the interlocutor unless the sheriff otherwise orders.

(10) The sheriff must appoint a party to intimate to the person seeking recall a copy of the interlocutor and a notice in Form 11G.

(11) Where a person on whom a notice and interlocutor has been intimated under paragraph (10) fails to appear or be represented at a diet fixed under paragraph (8) and to state his or her intention as required by that paragraph, the sheriff may grant decree of new or make such other order or finding as the sheriff thinks fit."

(5) In Schedule 1 (forms)—

(a) omit Forms 6A and 6B(6);

(b) in Form 7(7), omit the words "(In actions to which an order under section 2 of the Mortgage Rights (Scotland) Act 2001 may be applied for, state whether Form 6B was sent in accordance with rule 2.7(7A)(b).)";

(c) after Form 11B(8) insert Forms 11C to 11G set out in the Schedule to this Act of Sederunt.

(6) The Ordinary Cause Rules are amended in accordance with subparagraphs (7) to (11).

(7) In rule 3.2 (actions relating to heritable property)(9), omit paragraph (3).

(8) In rule 3.3 (warrants of citation)(10), omit—

(a) paragraph (1)(d);

(b) paragraph (4).

(9) In rule 5.2 (form of citation and certificate)(11), omit—

(a) paragraph (1)(d);

(b) paragraph (2A).

(10) Rule 34.12 (applications under the Mortgage Rights (Scotland) Act 2001)(12) is omitted.

(11) In Appendix 1 (forms)—

(a) omit Forms O2A and O5A(13);

(b) in Form O6(14), omit the words "(In actions to which rule 3.2(3) applies, state whether Form O2A was sent in accordance with rule 3.3)".

(12) The Summary Application Rules and the Ordinary Cause Rules as they applied immediately before 30th September 2010 continue to have effect for the purpose of any matter under a provision referred to in those Rules which continues before the court, or may be brought before the court, in either case by virtue of the Home Owner and Debtor Protection (Scotland) Act 2010 (Transitional and Savings Provisions) Order 2010(15) (the "Transitional and Savings Order").

(13) Where article 6 of the Transitional and Savings Order applies, Form 11C applies subject to the modification that any required information which has not been provided at any time following

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(6) Forms 6A and 6B were inserted by S.S.I. 2002/7.

(7) Form 7 was inserted by S.S.I. 2002/7.

(8) Form 11B was inserted by S.S.I. 2000/387.

(9) Rule 3.2(3) was inserted by S.S.I. 2002/7.

(10) Rule 3.3(1)(d) and (4) were inserted by S.S.I. 2002/7.

(11) Rules 5.2(1)(d) and (2A) were inserted by S.S.I. 2002/7.

(12) Rule 34.12 was inserted by S.S.I. 2002/7.

(13) Forms O2A and O5A were inserted by S.S.I. 2002/7.

(14) Form O6 was inserted by S.S.I. 2002/7.

(15) S.S.I. 2010/316.

the default and before 30th September 2010 must be provided as soon as is reasonably practicable on or after 30th September 2010.